Supreme Court, U.S.
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No. 99-1391

In the Supreme Court of the United States

ROSA COVINGTON PACKARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the imposition of federal income taxes, penalties and interest on petitioner violates the Free Exercise Clause of the First Amendment to the United States Constitution or the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is unpublished, but the decision is noted at 198 F.3d 234 (Table). The opinion of the district court (Pet. App. B1-B9) is reported at 7 F. Supp. 2d 143.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1999. The petition for rehearing was denied on November 19, 1999 (Pet. App. C1-C2). The petition for a writ of certiorari was filed on February 17, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. Petitioner is a member of the Religious Society of Friends, commonly known as the Quakers, who sincerely believes that participation in war is contrary to God's will (Pet. App. B1, B3; R. 1, at 1, 3). [1] Petitioner also believes that a "voluntary" payment of taxes—one made without the compulsion of a court order—is against the will of God to the extent that such taxes are used to fund participation in war by others (Pet. App. B3; R. 1, at 3).

Although petitioner timely filed federal income tax returns for the years 1992 and 1993, petitioner did not pay any of the taxes shown due on those returns. Instead, she deposited the taxes in an escrow fund with instructions for the monies not to be paid to the IRS unless the government first agreed to spend the monies only on nonmilitary items. R. 1, at 4, 8, 12.

2. The United States collected petitioner's unpaid taxes for the years 1992 and 1993 by levy (Pet. App. B1-B2). The government also collected interest on the unpaid taxes and statutory additions to tax for failure to timely pay taxes (26 U.S.C. 6651(a)(2)) and for underpayment of estimated taxes (26 U.S.C. 6654). After petitioner's administrative claims for refund were denied, petitioner commenced this refund suit in federal district court.

Petitioner did not dispute her liability for the taxes collected by the government. She contended, however, that she was not liable for the asserted additions to tax under 26 U.S.C. 6651(a)(2) because she had "reasonable cause" for her failure to timely pay her taxes (Pet. App.

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[1] "R." references are to the documents contained in the original record, as numbered by the clerk of the district court.

B5). She also claimed that, even if she did not literally come within the terms of the statutory exceptions to the penalties under 26 U.S.C. 6651(a)(2), the government's refusal to grant her an exemption from additions to tax constituted an impermissible discrimination against her religious beliefs in violation of the Free Exercise Clause of the First Amendment (Pet. App. B5). She further asserted that a requirement that she voluntarily pay her taxes, or be liable for penalties for a failure to do so, violated the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* She claimed that a less intrusive means of furthering the government's compelling interest in collecting taxes than imposing penalties for noncompliance should be required to comply with that Act (Pet. App. B6).

3. The district court granted judgment on the pleadings to the United States (Pet. App. B1-B9), and the court of appeals affirmed (*id.* at A1-A2). The court of appeals noted that the contentions raised by petitioner in this case had recently been addressed and rejected in that circuit in *Browne* v. *United States*, 176 F.3d 25 (2d Cir. 1999), cert. denied, 120 S. Ct. 934 (2000), and by the Third Circuit in *Adams* v. *Commissioner*, 170 F.3d 173 (1999), cert. denied, 120 S. Ct. 937 (2000). For the reasons stated in those decisions, the court of appeals concluded that petitioner's claims in this case were "without merit" (Pet. App. A2).

ARGUMENT

This case presents the same questions presented in the petitions for a writ of certiorari in *Browne* v. *United States*, *supra*, and *Adams* v. *Commissioner*, *supra*, which this Court has denied. For the same reasons that the Court denied the petitions in *Browne* and *Adams*, and for the reasons detailed in our brief in opposition in

Browne, the petition for a writ of certiorari should be denied in this case.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2] We are providing herewith to petitioner a copy of the government's brief in opposition to the petition in *Browne*.